



Idaho Department of Environmental Quality Draft §401 Water Quality Certification

July 14, 2016

404 Permit Application Number: NWW-2016-00265

Applicant/Authorized Agent: Union Independent Highway District

Project Location: T31N R2E S27 NE1/4 SE1/4

Receiving Water Body: South Fork Cottonwood Creek

Pursuant to the provisions of Section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), as amended; 33 U.S.C. Section 1341(a)(1); and Idaho Code §§ 39-101 et seq. and 39-3601 et seq., the Idaho Department of Environmental Quality (DEQ) has authority to review activities receiving Section 404 dredge and fill permits and issue water quality certification decisions.

Based upon its review of the joint application for permit, received on June 29, 2016, DEQ certifies that if the permittee complies with the terms and conditions imposed by the permit along with the conditions set forth in this water quality certification, then there is reasonable assurance the activity will comply with the applicable requirements of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, the Idaho Water Quality Standards (WQS) (IDAPA 58.01.02), and other appropriate water quality requirements of state law.

This certification does not constitute authorization of the permitted activities by any other state or federal agency or private person or entity. This certification does not excuse the permit holder from the obligation to obtain any other necessary approvals, authorizations, or permits.

Project Description

The project entails work in South Fork Cottonwood Creek to replace the existing deficient Zumwalt Road Bridge with a bottomless multi-plate arch culvert. The new culvert will be placed 30 feet down stream of the existing road bridge to provide better alignment of the roadway for public safety. Work will be performed during the summer low water flow period. If flow is present, a cofferdam and bypass will be in place to minimize effects on the stream.

Antidegradation Review

The WQS contain an antidegradation policy providing three levels of protection to water bodies in Idaho (IDAPA 58.01.02.051).

- Tier 1 Protection. The first level of protection applies to all water bodies subject to Clean Water Act jurisdiction and ensures that existing uses of a water body and the level of water quality necessary to protect those existing uses will be maintained and protected (IDAPA 58.01.02.051.01; 58.01.02.052.01). Additionally, a Tier 1 review is performed for all new or reissued permits or licenses (IDAPA 58.01.02.052.07).
- Tier 2 Protection. The second level of protection applies to those water bodies considered high quality and ensures that no lowering of water quality will be allowed unless deemed necessary to accommodate important economic or social development (IDAPA 58.01.02.051.02; 58.01.02.052.08).
- Tier 3 Protection. The third level of protection applies to water bodies that have been designated outstanding resource waters and requires that activities not cause a lowering of water quality (IDAPA 58.01.02.051.03; 58.01.02.052.09).

DEQ is employing a water body by water body approach to implementing Idaho's antidegradation policy. This approach means that any water body fully supporting its beneficial uses will be considered high quality (IDAPA 58.01.02.052.05.a). Any water body not fully supporting its beneficial uses will be provided Tier 1 protection for that use, unless specific circumstances warranting Tier 2 protection are met (IDAPA 58.01.02.052.05.c). The most recent federally approved Integrated Report and supporting data are used to determine support status and the tier of protection (IDAPA 58.01.02.052.05).

Pollutants of Concern

The primary pollutant of concern for this project is sediment. As part of the Section 401 water quality certification, DEQ is requiring the applicant comply with various conditions to protect water quality and to meet Idaho WQS, including the water quality criteria applicable to sediment.

Receiving Water Body Level of Protection

This project is located on the South Fork Cottonwood Creek within the South Fork Clearwater Subbasin assessment unit (AU) 17060305CL008_03. This AU has not yet been designated. Because DEQ presumes most waters in the state will support cold water aquatic life and primary or secondary contact recreation beneficial uses, undesignated waters are protected for these uses (IDAPA 58.01.02.101.01.a). In addition to these uses, all waters of the state are protected for agricultural and industrial water supply, wildlife habitat, and aesthetics (IDAPA 58.01.02.100).

According to DEQ's 2012 Integrated Report, this AU is not fully supporting one or more of its assessed uses. The cold water aquatic life beneficial use in the South Fork Cottonwood Creek is not fully supported due to excess nutrients, dissolved oxygen, sediment and excess temperature. The secondary contact recreation beneficial use is not fully supported due to fecal coliform (Cottonwood Creek TMDL, 2000). As such, DEQ will provide Tier 1 protection only for both the cold water aquatic life and contact recreation beneficial uses (IDAPA 58.01.02.052.05.c).

Protection and Maintenance of Existing Uses (Tier 1 Protection)

As noted above, a Tier 1 review is performed for all new or reissued permits or licenses, applies to all waters subject to the jurisdiction of the Clean Water Act, and requires demonstration that existing uses and the level of water quality necessary to protect existing uses shall be maintained and protected. The numeric and narrative criteria in the WQS are set at levels that ensure protection of designated beneficial uses.

Water bodies not supporting existing or designated beneficial uses must be identified as water quality limited, and a total maximum daily load (TMDL) must be prepared for those pollutants causing impairment. This AU is included in the Cottonwood Creek TMDL, approved by the Environmental Protection Agency in June, 2000.

The Cottonwood Creek TMDL was developed in part to address impairment to multiple AUs within the subbasin. Excess nutrients, dissolved oxygen, sediment, temperature and fecal coliform were addressed for the Cottonwood Creek watershed. Once a TMDL is developed, discharges of causative pollutants shall be consistent with the allocations in the TMDL (IDAPA 58.01.02.055.05). Prior to the development of the TMDL, the WQS require the application of the antidegradation policy and implementation provisions to maintain and protect uses (IDAPA 58.01.02.055.04).

During the construction phase, the applicant will implement, install, maintain, monitor, and adaptively manage best management practices (BMPs) directed toward reducing erosion and minimizing turbidity levels in receiving water bodies downstream of the project. In addition, permanent erosion and sediment controls will be implemented, which will minimize or prevent future sediment contributions from the project area. As long as the project is conducted in accordance with the provisions of the project plans, Section 404 permit, and conditions of this certification, then there is reasonable assurance the project will comply with the state's numeric and narrative criteria. These criteria are set at levels that protect and maintain designated and existing beneficial uses. In addition, the project will be consistent with the *Cottonwood Creek TMDL*. Project activities are not expected to contribute sources of fecal coliform, or dissolved oxygen impairments to Cottonwood Creek. Although it is necessary to ensure that project activities do not cause further temperature or sediment exceedances, any trees shrubs and riparian vegetation removed must be successfully reestablished, permanent erosion and sediment controls must also be implemented. Activities with take place during the low flow summer time period and a diversion coffer dam may be in place to limit sediment transport and will minimize or prevent future sediment contributions from the project area. The provisions in the 404 permit, coupled with the conditions of this certification, ensure that degradation to the South Fork Cottonwood Creek will not occur. Therefore, DEQ concludes that this project complies with the Tier 1 provisions of Idaho's WQS (IDAPA 58.01.02.051.02; 58.01.02.052.06 and 58.01.02.052.08).

There is no available information indicating the presence of any existing beneficial uses aside from those that are already discussed above; therefore, the permit ensures that the level of water quality necessary to protect beneficial uses is maintained and protected in compliance with the Tier 1 provisions of Idaho's WQS (IDAPA 58.01.02.051.01 and 58.01.02.052.07).

Conditions Necessary to Ensure Compliance with Water Quality Standards or Other Appropriate Water Quality Requirements of State Law

General Conditions

1. The proposed project shall be constructed in a manner that will not violate Idaho's Water Quality Standards as set forth in IDAPA 58.01.02.
2. DEQ reserves the right to modify, amend, or revoke this certification if DEQ determines that, due to changes in relevant circumstances – including without limitation, changes in project activities, the characteristics of the receiving waterbodies, or state WQS – there is no longer reasonable assurance of compliance with WQS or other appropriate requirements of state law.
3. If ownership of the project changes, the certification holder shall notify DEQ, in writing, upon transferring this ownership or responsibility for compliance with these conditions to another person or party. The new owner/operator shall request, in writing, the transfer of this water quality certification to his/her name.
4. The applicant is responsible for all work done by contractors and must ensure the contractors are informed of and follow the conditions described in this certification and the section 404 permit.
5. If this project disturbs more than 1 acre and there is potential for discharge of stormwater to waters of the state, coverage under the EPA Stormwater Construction General Permit *must* be obtained. More information can be found at <http://yosemite.epa.gov/R10/WATER.NSF/NPDES+Permits/Region+10+CGP+resources>.

Erosion and Sediment Control

1. All practical best management practices (BMPs) on disturbed banks and in waters of the state must be implemented to minimize turbidity. Turbidity shall not exceed background turbidity by more than 50 NTU instantaneously or more than 25 NTU for more than 10 consecutive days. BMP effectiveness shall be monitored during project implementation. BMPs shall be replaced or augmented if they are not effective.
1. One resource that may be used in evaluating appropriate BMPs is DEQ's *Catalog of Stormwater Best Management Practices for Idaho Cities and Counties*, available online at <http://www.deq.idaho.gov/media/494058-entire.pdf>. Other resources may also be used for selecting appropriate BMPs.
2. Erosion and sediment control measures shall be installed in a manner that will provide long-term sediment and erosion control to prevent excess sediment from entering waters of the state.
3. All construction debris, excavated or staged fill material and cofferdam materials shall be properly disposed of so they cannot enter waters of the state or cause water quality degradation.
4. Disturbed areas suitable for vegetation shall be seeded or revegetated to prevent subsequent soil erosion.

5. Maximum fill slopes shall be such that material is structurally stable once placed and does not slough into the stream channel during construction, during periods prior to revegetation, or after vegetation is established.
6. Work in open water is to be kept at a minimum and only when necessary. Construction affecting the bed or banks shall take place only during periods of low flow

Vegetation Protection and Restoration

1. Disturbance of existing riparian and native vegetation shall be kept to a minimum. To the maximum extent practical, staging areas and access points should be placed in open, upland areas.
2. If authorized work results in unavoidable vegetative disturbance, riparian and wetland vegetation shall be successfully reestablished to function for water quality benefit at pre-project levels or improved at the completion of authorized work.

Management of Hazardous or Deleterious Materials

1. Adequate measures and controls must be in place to ensure that petroleum products and hazardous, toxic, and/or deleterious materials will not enter waters of the state.
2. Equipment and machinery must be moved to an upland area prior to refueling, repair, and/or maintenance.
3. Emergency spill procedures shall be in place and may include a spill response kit (e.g., oil absorbent booms or other equipment).
4. Any release of petroleum products, hazardous or deleterious materials must be immediately contained and remediated and DEQ must be notified.

Culverts

1. The culvert shall not constrict the stream channel and shall not be angled such that the outflow is directed toward the stream bank.
2. The culvert outflow shall be armored with riprap to provide erosion control. This riprap will be clean, angular, dense rock that is free of fines and resistant to decomposition.
3. Culverts shall be sized appropriately to maintain the natural drainage patterns.

Right to Appeal Final Certification

The final Section 401 Water Quality Certification may be appealed by submitting a petition to initiate a contested case, pursuant to Idaho Code § 39-107(5) and the “Rules of Administrative Procedure before the Board of Environmental Quality” (IDAPA 58.01.23), within 35 days of the date of the final certification.

Questions or comments regarding the actions taken in this certification should be directed to Mark Sellet at (208)799-4370 or email at mark.sellet@deq.idaho.gov.

Draft

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